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9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS**
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. VN-2006-2010

13 FAITH ANN BAKER
2333 Eltringe Drive
14 Alpine, CA 91901

A C C U S A T I O N

15 Vocational Nurse License No. VN 183958

16 Respondent.

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18 Complainant alleges:

19 PARTIES

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
21 Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
22 Nursing and Psychiatric Technicians, Department of Consumer Affairs.
23 2. On or about March 27, 1998, the Bureau of Vocational Nursing and
24 Psychiatric Technicians issued Vocational Nurse License Number VN 183958 to Faith Ann
25 Baker (Respondent). The Vocational Nurse License was in full force and effect at all times
26 relevant to the charges brought herein and expired on March 31, 2008. The license is currently in
27 a delinquent status.

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JURISDICTION

3. This Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau of Vocational Nursing and Psychiatric Technicians, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. On July 1, 2008, Business and Professions Code (Code) section 2841 became inoperative ending the existence of the Board of Vocational Nursing and Psychiatric Technicians (Board). Pursuant to Code sections 101.1, subdivision (b) and 150, the Department of Consumer Affairs succeeded to and is vested with all of the duties, powers, purposes, responsibilities and jurisdiction of the Board and the department is under the control of the Director of Consumer Affairs. The Board is now known as the Bureau of Vocational Nursing and Psychiatric Technicians (Bureau).

5. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

6. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

7. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

1 (f) Conviction of a crime substantially related to the qualifications,
2 functions, and duties of a licensed vocational nurse, in which event the record of
the conviction shall be conclusive evidence of the conviction.

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4 8. Section 2878.5 of the Code states:

5 In addition to other acts constituting unprofessional conduct within the
6 meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional
conduct for a person licensed under this chapter to do any of the following:

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8 (b) Use any controlled substance as defined in Division 10 of the
9 Health and Safety Code, or any dangerous drug as defined in Section 4022, or
alcoholic beverages, to an extent or in a manner dangerous or injurious to himself
10 or herself, any other person, or the public, or to the extent that the use impairs his
or her ability to conduct with safety to the public the practice authorized by his or
her license.

11 (c) Be convicted of a criminal offense involving possession of any
12 narcotic or dangerous drug, or the prescription, consumption, or
self-administration of any of the substances described in subdivisions (a) and (b)
13 of this section, in which event the record of the conviction is conclusive evidence
thereof.

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16 9. Section 2878.8 of the Code states:

17 The board may deny any application or may suspend or revoke any license
18 issued under this chapter [the Vocational Nursing Practice Act] based upon the
denial of licensure, suspension, restriction, or other disciplinary action of a license
19 by another state, any other government agency, or by another California health
care professional licensing board. A certified copy of the finding shall be
20 conclusive evidence of that action provided that, if from another state, the findings
establish an act which if committed in California would be grounds for discipline.

21 10. Section 490 of the Code provides, in pertinent part, that the Board may
22 suspend or revoke a license when it finds that the licensee has been convicted of a crime
23 substantially related to the qualifications, functions or duties of a licensed vocational nurse.

24 11. Section 492 of the Code states:

25 Notwithstanding any other provision of law, successful completion of any
26 diversion program under the Penal Code, or successful completion of an alcohol
and drug problem assessment program under Article 5 (commencing with section
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
27 any agency established under Division 2 ([Healing Arts] commencing with
Section 500) of this code, or any initiative act referred to in that division, from
28 taking disciplinary action against a licensee or from denying a license for

1 professional misconduct, notwithstanding that evidence of that misconduct may
2 be recorded in a record pertaining to an arrest.

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4 12. Section 125.3 of the Code provides, in pertinent part, that the Board may
5 request the administrative law judge to direct a licensee found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 13. California Code of Regulations, title 16, section 2521, states:

9 For the purposes of denial, suspension, or revocation of a license pursuant
10 to Division 1.5 (commencing with Section 475) of the Business and Professions
11 Code, a crime or act shall be considered to be substantially related to the
12 qualifications, functions or duties of a licensed vocational nurse if to a substantial
13 degree it evidences present or potential unfitness of a licensed vocational nurse to
14 perform the functions authorized by his license in a manner consistent with the
15 public health, safety, or welfare. Such crimes or acts shall include but not be
16 limited to those involving the following:

17 (a) Procuring a license by fraud, misrepresentation, or mistake.

18 (b) A conviction of practicing medicine without a license in
19 violation of Chapter 5 of Division 2 of the Business and Professions Code.

20 (c) Violating or attempting to violate, directly or indirectly, or
21 assisting in or abetting the violation of, or conspiring to violate any provision or
22 term of Chapter 6.5, Division 2 of the Business and Professions Code.

23 (d) Aiding or assisting, or agreeing to aid or assist any person or
24 persons, whether a licensed physician or not, in the performance of or arranging
25 for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the
26 Business and Professions Code.

27 (e) Conviction of a crime involving fiscal dishonesty.

28 (f) Any crime or act involving the sale, gift, administration, or
furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in
Section 4022 of the Business and Professions Code.

14. California Code of Regulations, title 16, section 2522.5 states:

(a) When considering the suspension or revocation of a license on the
ground that a licensed vocational nurse has been convicted of a crime, the Board,
in evaluating the rehabilitation of such person and his eligibility for a license will
consider the following criteria:

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- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

FIRST CAUSE FOR DISCIPLINE

(October 30, 2006 Criminal Conviction for Driving With a BAC of 0.08 or More on August 26, 2006)

15. Respondent has subjected her license to disciplinary action under sections 490 and 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed vocational nurse. The circumstances are as follows:

a. On or about October 30, 2006, in a criminal proceeding entitled *People v. Faith A. Baker*, San Diego County Superior Court (East County Division), case number C265500, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving a vehicle with a blood alcohol content (BAC) of 0.08 or more, a misdemeanor.

b. As a result of the conviction, on or about October 30, 2006, Respondent was sentenced to five years summary probation. The court stayed a sentence of 180 days in custody pending successful completion of probation. Respondent was further ordered to complete a three-month First Conviction Program, attend a MADD course, and pay \$1,776 in fines and fees. Respondent's driver's license was suspended. On or about April 20, 2007, as a result of the arrest detailed in paragraph 18, below, Respondent's probation was revoked. On or about June 28, 2007, the court extended Respondent's probation to October 29, 2011.

1 c. The facts that led to the conviction were that on or about the early
2 morning hours of August 26, 2006, while entering the on-ramp of eastbound Interstate 8 in La
3 Mesa, the California Highway Patrol observed a vehicle parked on the shoulder of the on-ramp.
4 The two CHP officers walked down a small embankment to the Ford Escort and observed a
5 female (Respondent) sitting in the rear seat. When they shined a flashlight on the vehicle,
6 Respondent exited the vehicle. Respondent told the officers she had been driving home and her
7 car broke down; she said she had been stopped on the freeway shoulder for 1 ½ hours. The
8 officers noticed clothing strewn about the shoulder and Respondent said the clothing was hers.
9 While talking to Respondent, the officers detected the strong odor of alcohol on her breath.
10 Respondent was rambling and her speech was slurred. She admitted to consuming four drinks
11 earlier at a hotel with her husband, and that her husband left the hotel without her and was at
12 home in Alpine. Respondent told the officers that her husband had already called the police to
13 report that she was drinking and driving. While conducting pre-Field Sobriety Test questions,
14 Respondent became agitated; she began crying and pacing about the shoulder. The officer
15 formed the opinion that Respondent was driving under the influence of alcohol based on her
16 admission to drinking, her admission to driving, her objective symptoms of intoxication, and
17 failing to properly perform the Horizontal Gaze Nystagmus test. Respondent was transported to
18 jail (Las Colinas) where she submitted to two breath tests, each measuring a blood alcohol
19 content (BAC) of 0.12%. Respondent requested a blood test. During a intake medical screening,
20 Respondent told the nurse that she would kill herself after her release and provided details as to
21 how she would kill herself. The officers transported Respondent to the San Diego County Jail
22 where two vials of blood were drawn. The officers then transported Respondent to the San
23 Diego County Mental Health Center (San Diego County Psychiatric Hospital). Respondent was
24 evaluated by the psychiatric staff and determined Respondent required a 72-hour detention for
25 evaluation and treatment pursuant to Welfare and Institutions Code section 5150. The officers
26 released Respondent into the custody of the hospital.

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1 Respondent and her husband. The husband reported that they had been cooking in the backyard
2 earlier in the evening. Respondent had several drinks and started to become angry about her 17-
3 year-old son. The fight escalated and moved into the house. The husband saw Respondent walk
4 into their bedroom and pull a handgun from underneath the mattress. Fearing that either
5 Respondent was going to commit suicide, or he was going to be shot, the husband fled the house
6 and telephoned 9-1-1 as he walked down the driveway of the residence. A few seconds after
7 leaving the house, he heard a gunshot and he believed the bullet passed through the trees in the
8 front yard next to him. The husband hid in the bushes until the deputies arrived. The deputies
9 examined a small, circular hole in the upper corner of the front door consistent with the impact of
10 a .40 caliber bullet; the bullet had passed completely through the door. A .40 caliber Smith and
11 Wesson semi-automatic pistol was recovered under the mattress in Respondent's bedroom.
12 Respondent was arrested and transported to the sheriff's substation. Although Respondent was
13 admonished with her *Miranda* rights, she made several spontaneous statements: the shooting
14 was an accident, she was not trying to hurt her husband, she only wanted him to leave, and that
15 the gun went off while she was trying to put the gun back.

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1 PRAYER

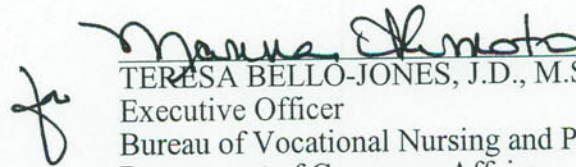
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Bureau of Vocational Nursing and Psychiatric
4 Technicians issue a decision:

5 1. Revoking or suspending Vocational Nurse License Number VN 183958,
6 issued to Faith Ann Baker;

7 2. Ordering Faith Ann Baker to pay the Bureau of Vocational Nursing and
8 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: August 7, 2008

13
14  TERESA BELLO-JONES, J.D., M.S.N., R.N.
15 Executive Officer
16 Bureau of Vocational Nursing and Psychiatric Technicians
17 Department of Consumer Affairs
18 State of California
19 Complainant
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